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S E C R E T PRAGUE 000118

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TAGS: [MARR](#) [PGOV](#) [PREL](#) [ECON](#) [TSPL](#) [EZ](#)
SUBJECT: EMBASSY PRAGUE CONCERNS ABOUT PROPOSED CZECH TEXT
TO RDT&E AGREEMENT

REF: A. PRAGUE 91
[1](#)B. NEUBAUER-ARKY E-MAIL 19 NOVEMBER 2009

Classified By: Charge d'Affaires Mary Thompson-Jones, reason 1.4 (b) and (d).

[1](#)1. (C) Summary: On February 23, the Czech MoD proposed the following text to the Research, Development, Testing and Evaluation (RDT&E) Agreement: "If either Party determines that Contracting is necessary to fulfill that Party's obligations under Article III (Scope of Work) of this Agreement, that Party shall contract in accordance with its respective national laws, regulations and procedures." Embassy Prague is concerned that the proposed text tacitly accepts the Czech "direct call" procurement procedure, which the USG considers non-transparent. Agreeing to this text could hinder future transparency efforts and affect future negotiations with the Czech Republic. End Summary.

[1](#)2. (S/NF) Since Czech law allows for "direct call," this proposed language still allows the Czech government to contract by direct call under this Agreement, while the USG would contract in accordance with USG sole source regulations. In addition, Czechs may regard U.S. acceptance of this language as tacit approval of direct call. Across the USG, there is unanimous agreement that the Czech direct call procedure is non-transparent and unfairly disadvantages foreign companies. In discussions about this Agreement, the USG has consistently signaled concerns about direct call to the Czech government. We know that parts of the Czech government itself have concerns about direct call (ref A). This text does not help USG efforts to promote transparency.

[1](#)3. (C) The proposed text also tacitly presents U.S. and Czech procedures as equivalent. This is at a variance with internal DoD assessments (ref B) that have concluded that the Czech direct call procedure is not equivalent to DoD sole source procedure. While DoD procedures contain tight restrictions on sole sourcing (allowed in narrowly defined specific circumstances and only with written justification and analysis supporting a sole source decision), Czech direct call contains none of these restrictions. It is our understanding that this procedure allows/constitutes unfettered sole source contracting.

[1](#)4. (C) Agreeing to this text could hinder future transparency efforts. In the near future, the USG will negotiate a Reciprocal Defense Procurement (RDP) agreement with the Czech Republic. In negotiating the RDP and other future agreements, the Czech government could point to our acceptance of the RDT&E Agreement language as precedent. As well, within the Czech government, apparent USG acceptance of

the direct call procedure in this case would undermine those who share our view and weaken any nascent initiative to reform the process.

15. (C) DoD legal experts have been negotiating the RDT&E Agreement for months, and we leave it to them to consider what alternative language might be appropriate. Our concern is that the present MoD proposal undercuts USG efforts to promote transparency in the Czech Republic.
Thompson-Jones